Nos. 12251 and 12252

In the United States Court of Appeals for the Ninth Circuit

J. HOWARD MCGRATH, AS THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

TADAYASU ABO ET AL., APPELLEES

J. HOWARD MCGRATH, AS THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLANTS

v.

MARY KANAME FURUYA ET AL., APPELLEES

ON APPEALS FROM JUDGMENTS OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

APPELLANTS' REPLY BRIEF

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APPELLANTS' REPLY BRIEF

APPELLEES UNDER ALIEN ENEMY REMOVAL ORDERS

In view of the statements in appellees' brief (e. g. p. 3) indicating a belief that only 292 of them continue to be under alien enemy removal orders, the records have been carefully rechecked and it has been found that the correct figure for both cases is 302, as the defendants offered to prove. (See Appendix I to appellants' main brief.)

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APPELLEES' SEEMING ATTEMPT TO BLAME APPELLANTS FOR PROCEEDINGS BELOW ON INADEQUATE RECORD

At page 5, the appellees assert that the stipulation of submission (R. 408 (a)) "was entered into at the special instance and request of the appellants for the purpose of submitting the cause on the merits so as to obtain a final judicial determination of the issues involved and thereby avoid thousands of individual hearings which would be impractical and would tie up the District Court for years in litigation." With reference to this assertion, which is not supported by the record, the Court is respectfully referred to the matters set forth in Exhibit A, pp. 14–17, *infra*.[1] As shown by that exhibit certain language in a proposed stipulation, first submitted by counsel for appellees, was found objectionable by the appellants and appellees were thereupon offered their choice between (1) language in lieu thereof similar to that of the actual stipulation; (2) unconditional submission on the merits; or (3) no stipulation at all. The obviously intended suggestion of the above quoted language from appellees' brief, i. e., that the appellants were the moving parties in the matter, is thus clearly refuted.

Moreover, it was (and is) the view of the appellants that the plaintiffs had not made out, and could not

[1] None of the matters set forth in the Appendix to this brief, *infra*, is contained in the record in this case. Each is included as an Exhibit to this brief in refutation of some unsupported assertion on behalf of the appellees which we feel should not go unanswered. In view of the statements made on behalf of the appellees (at p. 14) concerning the honesty of counsel for appellants, certified, photostatic copies of all matters set forth in the Appendix, *infra*, will be lodged with the Clerk.

establish, a sufficient case for relief merely by showing the so-called general conditions under which the renunciations occurred without producing satisfactory evidence that such conditions actually caused them individually to renounce their citizenship. Obviously, if the District Court should disagree and be sustained in a holding to the effect that the "general conditions" were enough to vitiate the renunciations, much time and money would have been saved by the stipulation, but, if individual trials were to be held, the defendants wished to be in the same position to meet plaintiffs' evidence as if no stipulation had been entered, and this was one of the chief reasons for objecting to the language proposed by the plaintiffs (Ibid). The affidavit of plaintiffs' counsel (R. 445) to the effect that he had been informed by a former attorney for the defendants, just prior to October 10, 1947, the date of the stipulation, "that the defendants had no further evidence whatever to introduce in the cause against plaintiffs, or any of them, other than that already filed in documentary form therein" is, we submit, conclusively refuted by the affidavit of Mr. Thomas M. Cooley, II, which appears in Appendix B to appellants' main brief.

The suggestion at p. 7 that up to September 20, 1948, "the Justice Department attorneys contemplated that they would treat a final District Court decision of the causes as being dispositive of the rights of all citizens who had renounced because the suits were representative class suits" (pp. 7–8) is, we think, sufficiently answered by the fact that a number of them are also parties to *Barber* v. *Abo,*

No. 12195 herein, in which an appeal already had been noted on September 8, 1947 (see R. 198 in that case), and by the further fact that the appeal in the case of *Clark* v. *Inouye,* No. 11839 herein, was noted on December 10, 1947 (see R. 371 in that case). See, also, pp. 27–29 of appellants' main brief herein. The inference, that the appellees would seem to have the Court draw from their statement (p. 8) that "*By* September 27, 1948, the last joiner of parties plaintiff had been made by agreement between the parties" (italics supplied), to the effect that this had something to do with the defendants' alleged changing of their minds about treating the decision of the District Court as final, amounts to nothing more than reliance upon a half truth to support an erroneous conclusion. The actual fact is that the last such stipulation had been filed much earlier, i. e., on May 28, 1948 (see R. 499 *et seq.* See, also, Exhibit B, *infra,* and p. 25 of appellants' main brief). Presumably plaintiffs' counsel herein was aware of the decision of the District Court in *Inouye* v. *Clark,* 73 F. Supp. 1000, and if he was unaware of the appeal then pending therein, the fault was his own.[2]

[2] If appellees' conclusion that some change of the Government's position occurred in September 1948, is based upon the fact that the appeal in *Acheson* v. *Murakami*, No. 12082 herein, was noted on October 1, 1948 (see R. 54 in that case), they overlook the fact that each of the plaintiffs in the latter case was also a party to the *Inouye* case, *supra*, and that each of the questions presented by the *Murakami* case was also presented by the *Inouye* case, although the Court found it unnecessary to reach them in its decision (175 F. 2d 740).

The statement (at p. 8) that "counsel for the plaintiffs, pursuant to an oral agreement with the attorneys for the Justice Department, refrained from entering an interlocutory decree simply to enable that Department to examine its files relating to each renunciant to ascertain whether it intended to file any such designation and to prepare it in the event that it decided so to do" is again only half true. As shown by Exhibit B, pp. 17–23, *infra,* plaintiffs' offer was made not only orally but in writing and the response thereto shows that the offer was not accepted. Moreover, the fact that the defendants did not consider either that they had any such agreement with plaintiffs, or that the withholding of the interlocutory decree had the effect of extending their time is conclusively shown, we submit, by the fact that they obtained all necessary extensions of time by court orders (see R. 499, 500, 501). Moreover, after receipt of the Department's letter of June 23, 1948 (Exhibit B, *infra*), it is most difficult to understand how the plaintiffs could have been under any misapprehension as to the defendants' attitude with regard to the cases.

The charge (at p. 9) that on January 25, 1949, the defendants were in position to file the designation that they actually did file on February 25, 1949, is largely answered, we believe, by Appendices B and C to appellants' main brief which show that defendants had not been able to complete the work required on such designation by the latter date. However, Exhibit C, p. 23, *infra,* makes it clear that appellees' charge in this connection is untrue.

THE CHARGE THAT CERTAIN DEFENDANTS "WERE OPPOSED TO CONTESTING THE SUITS"

At p. 11, the appellees comment upon the fact that the answer herein was limited to defendants *Clark, Hennessy* and *Wixon* (see R. 127) and state that the "reason why [counsel for defendants] did not file specific answers for the other defendants is simply that the Justice Department lawyers, after conferences with the other defendants, were informed that the Secretaries of the Interior and State Departments and the other defendants were opposed to contesting the suits." Here, again, is a half truth. Exhibit D, p. 25, *infra,* clearly shows that the Secretary of the Interior believed that he and other Interior Department defendants were not proper parties to the suits because they were not parties to the controversy then involved herein. It may be literally true that he was for that reason, "opposed to contesting the suits" but a truer statement of the fact is that he did not want to be in them at all. Certainly it cannot be inferred that he wished to confess judgment.

If contrary to our supposition the appellees, by the above-quoted statement, merely desire to advise the Court that certain of the defendants did not wish to be parties to the suits, it is clear, we submit, from the authorities cited on pages 72–75 of our main brief, that the matter of consenting to become parties to the suits was personal to them and that nothing done by Government counsel without their consent could make them parties to litigation pending in a District where they could not be personally served.

THE CHARGE THAT GOVERNMENT COUNSEL FALSELY SEEK TO MISLEAD THE COURT

Appellees devote pages 13–14 to a discussion of the footnote which appears on pp. 80–81 of appellants' main brief. The chief point of that footnote is, of course, to emphasize the total lack in the present record of any evidence tending to prove that all or any individual plaintiff renounced his citizenship involuntarily. A further purpose was to demonstrate the possibility that without such evidence, some persons named as plaintiffs may even have been joined in the action inadvertently without their consent who might not desire to have their renunciations set aside; in other words, a practical *reductio ad absurdum* of the contention that such evidence is unnecessary. It is true that the pleadings (at R. 118, 134) establish for the purpose of this case that each of the original plaintiffs had attempted to revoke his renunciation, and that fact was overlooked in preparing the footnote, which we regret. However, fewer than half of the present plaintiffs were parties at that time (see p. 25 of appellants' main brief) and, moreover, the footnote is not thereby seriously impaired because the subsequent attempts by some of the plaintiffs to revoke their renunciations is at least as consistent with the thesis that they had a change of heart as it is that they did not wish to renounce in the first place (see *Id.* pp. 51–52). We did not intend to imply, nor do we think the footnote susceptible of being interpreted as stating, that most of the plaintiffs did not authorize the suits or desire the relief prayed therein. However, notwithstanding counsel's indignation (which we do

not understand in view of Exhibit B, *infra*), and the assurances that he gives concerning his recollection and belief concerning requests received from and interviews had with them (since his investigations and recollection have been shown to be faulty in other connections), we see no occasion further to modify the footnote or to ask the Court to disregard it.

Appellees' statements on p. 14 concerning the honesty and integrity of Government counsel seem to us to go beyond limits of propriety in any event, and indicate a rash disposition to jump to conclusions without checking the facts, which should be significant in other connections as well. The appellants' main brief at two places (pp. 30–31, 80) specifically stated that the dismissals in question would be contained in a supplemental record. When the Court inspects that record it will find an additional dismissal on the part of *Yoshiko Yokoi* whose case in the Southern District is mentioned in the footnote in question (at p. 81), which was filed after the preparation of appellants' main brief, and which therefore was not noted therein.

Supplementing the information given in the footnote in question (at p. 80) concerning the case of *Yukiko Nakanishi* v. *Acheson,* No. 8652–WN, the Court is advised that on March 14, 1950, the District Court for the Southern District of California entered a judgment therein declaring that the plaintiff continued to be a citizen of the United States notwithstanding her renunciation. This judgment was entered pursuant to the procedures described at pp. 7–11 of appellants' main brief. The plaintiff in that

case had been permitted to return from Japan on a certificate of identity pursuant to 8 U. S. C. § 903, upon representations to and findings of the District Court that her testimony was necessary therein. Her dismissal filed in the present cause is therefore especially significant.

THE APPELLEES' STATEMENT OF THE CASE

The factual statements set forth in appellees' brief from pages 15–103, are to some extent covered in the specification of errors relating to the findings of fact of the District Court set forth on pages 34–53 of appellants' brief. We submit that it is significant that the appellees have not attempted to support the individual findings of fact by record references or otherwise.

Since it is manifestly impossible to reply in detail to the appellees' factual contentions[3] and since, in its opinion in the *Murakami* case, the Court cited with approval the book "The Spoilage" and quoted extensively from it, we are content to rely upon the *factual* statements therein as appellants' reply to the factual contentions contained in the appellees' brief to the extent that such contentions have not already been covered by the appellants' briefs. Obviously that book was not written with any bias against the segregees at Tule Lake who renounced their citizen-

[3] In view of the numerous inaccuracies, exaggerations and assertions *dehors* the record contained in appellees' statement (pp. 15–103) and since the choice of some for comment would necessarily imply that they were more serious or objectionable than others, we deem it inadvisable to discuss any of them in this reply brief.

ship and, contrary to the appellees' representation (p. 6) it was filed in this case by the plaintiffs and not by the defendants (see Exhibit E, p. 26, *infra*).

APPELLEES' CONTENTIONS THAT THE KOREMATSU CASE WAS WRONGLY DECIDED AND THAT THEY WERE WRONGFULLY IMPRISONED AT TULE LAKE

Pages 15 to 41 of the appellees' brief appear to be devoted primarily to an effort to persuade this Court that the Supreme Court of the United States was in error in its decision in the case of *Korematsu* v. *United States,* 323 U. S. 214. As the Court will see from the prevailing and dissenting opinions in that case it was thoroughly considered by the Court and appellees' statements and arguments obviously add nothing of value which might have produced a different decision.

If the Court adheres to the line of reasoning that it pursued in its decision of the case of *Acheson* v. *Murakami,* 176 F. 2d 953, to which the Government has acceded, it is obviously unimportant whether the Supreme Court was right or wrong in its decision in the *Korematsu* case. However, as we have pointed out, the plaintiffs in the present litigation could prevail under the authority of that decision only if they introduced evidence tending to prove that the coercive factors recognized in the *Murakami* case actually operated upon them individually and caused them to renounce their citizenship through fear of real or supposed consequences if they failed to take that action. Accordingly, in view of their complete failure to make any such showing, they must rely upon different theories; one of which is that, in effect, they

were unlawfully imprisoned at the times of their renunciations. (See Appellees' brief, pp. 104 *et seq.*)

As previously pointed out, the vast majority of decisions to renounce appear to have been made by the evacuees after they knew that they were free to leave the center (see, e. g., Appellants' brief, pp. 18–19, 38–39). Moreover, prisoners in penitentiaries and jails throughout the land were free to renounce under the statute if they wished to do so and, we suggest, it is most doubtful that any such renunciant could obtain judicial relief from the consequences of his act merely by showing that, for some reason, his imprisonment was unlawful. He would have to show, we believe, some actual causal connection between the imprisonment and his individual act of renunciation, not merely that it *might* have had some influence on his decision. These considerations, we submit, make it unnecessary for the Court to pass upon the question of the lawfulness of plaintiff's segregation at Tule Lake in the present cases.

If, however, the Court feels that it must go into the question of the legality of the segregation program, attention is invited to the defendants' offer to prove that more than a thousand of those who renounced at Tule Lake actually went to Japan voluntarily after cessation of hostilities; that, of the others, all but 385 had applied for repatriation or expatriation to Japan prior to their renunciations, and, that, of those who had not so applied, all but 115 had been segregated because of their unwillingness to give affirmative answers to the loyalty question. Of the remainder, 66 appear to have gone to Tule Lake voluntarily as

family members and only 23 were required to go on other grounds (see Appendix "I" to appellants' brief). In other words, the vast majority of the present plaintiffs had given evidence of loyalty to Japan which, as the Supreme Court in the *Korematsu* case seemed to feel, indicated that the military orders of evacuation had not been shown by later events to have been unreasonable. In that case the Court said (p. 219):

> That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion. Approximately 5,000 American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.

As the Court will recall, it was the supposed presence of disloyal persons among citizens and residents of Japanese ancestry, who might be dangerous to the war effort and whose identity could not readily be detected, that led the Supreme Court to hold the exclusion orders valid. Whether the Supreme Court was right or wrong in supposing that requests for expatriation and refusals to swear unqualified allegiance, in the circumstances, constituted sufficient confirmation of the actual presence of persons in the group (whose supposed presence justified the military orders excluding the entire group) it is difficult to see how their segregation from the other members of the group and subsequent detention could be held to be unlawful without overruling the reasoning of the

Korematsu case. Particularly so, since the present record does not establish that the plaintiffs were individually loyal to the United States, and certainly nothing therein would warrant the conclusion that *no* refusal to swear allegiance and *no* request for repatriation was prompted by loyalty to Japan.

OTHER LEGAL ARGUMENTS ADVANCED BY APPELLEES

The additional contentions advanced by the appellees at pages 104–128 appear either to have been answered by appellants' brief or too transparent to require answer. For example, the contention (p. 124) that the renunciation hearings constituted "Star Chamber" proceedings because not publicly conducted is a puny argument compared to that which would have been made if public hearings had been held and the pro-Japanese organizations thereby afforded an opportunity to learn of the statements made by the applicants being interviewed.

CONCLUSION

For the reasons stated in the appellants' opening brief herein, the judgment should be reversed.

H. G. Morison,
Assistant Attorney General,
Frank J. Hennessy,
United States Attorney,
Robert B. McMillan,
Assistant United States Attorney,
Enoch E. Ellison,
Paul J. Grumbly,
Attorneys, Department of Justice,
Attorney for Appellants.

APPENDIX

Exhibit A

(1)

September 26, 1947.

Air Mail

Re: Tule Lake Cases, Nos. 25294–5; Your File PF:EEE 93–1–1320.

The Attorney General,
Washington, D. C.

(Attention: Peyton Ford, Assistant Attorney General, and Charles Rothstein and E. E. Ellison, Alien Enemy Control Unit.)

Sir: Concerning those two equity suits, you will please find enclosed copy of proposed stipulation, prepared and submitted today by Mr. Wayne N. Collins, for your consideration and approval before it is signed by us.

Mr. Collins told us that he had lately discussed the matter over the telephone with Mr. Ellison, who suggested it would be well to take it up with us. We see no objection; especially since it would probably facilitate an earlier decision by Judge Goodman than as matters now stand before him.

Please wire me whether or not it is all right for us to sign the stipulation just as it is.

Respectfully,

Frank J. Hennessy,
United States Attorney.

Encl.

In the Southern Division of the United States District Court for the Northern District of California

No. 25294–G; No. 25295–G; Cons. No. 25294–G

TADAYASU ABO, ET AL., ETC., PLAINTIFFS, *v.* TOM CLARK, ETC., ET AL., DEFENDANTS

STIPULATION

It is stipulated between the parties hereto that this case be submitted to the Court on the cause, that is, on the merits and the record as it stands, including any evidence submitted on the respective motions for summary judgment and for judgment on the pleadings that is admissible as evidence, on the understanding that if the Court is unable, on said evidence, to decide the factual issues of duress, coercion, menace, intimidation, undue influence, fraud or mistake of law or fact as causing the renunciation of any plaintiff that a hearing on such issues of fact as to any such plaintiff be ordered or that additional affidavits of merit on such factual issues as to any such plaintiff be ordered filed by the parties hereto in lieu of any such hearing.

WAYNE M. COLLINS,
Attorney for Plaintiffs.

TOM C. CLARK,
Attorney General,
FRANK J. HENNESSY,
U. S. Attorney,

By: _____
Assistant U. S. Attorney.
Attorneys for Defendants.

Dated: SEPTEMBER —, 1947.

PF: EEE: yrj
D. J. File 93–1–1320

WASHINGTON, D. C., *October 2, 1947.*

FRANK J. HENNESSY, ESQ.
United States Attorney,
San Francisco, California.

Attention Mr. McMillan. Reurlet Tule Lake Cases 25294 and five. We are unable to agree to stipulation submitted by Collins. Suggest stipulation to effect that case be submitted on present record including affidavits and exhibits to extent that same are competent, relevant and material, and that parties close proofs for all purposes with provision that district court may, in its discretion, order production of any further or additional evidence it deems necessary for proper decision of any issue, in which event the parties shall have the same rights in respect of introduction of evidence as to cases of plaintiffs affected by order that they would have had if they had not entered into stipulation. Advise.

PEYTON FORD,
Assistant Attorney General.

[Telegram]

DEPARTMENT OF JUSTICE,
WF *San Francisco, Calif., Oct. 3.*

The ATTORNEY GENERAL,
Alien Enemy Control Union Unit.

Attention Peyton Ford, Assistant Attorney General. Reurtel yesterday Tule Lake Japanese equity cases 25294 and 5. Unable to distinguish difference in effect between Collins proposed stipulation and stipulation suggested in your wire. Advise.

HENNESSY.

917A OCT. 4.
25294 5.

PF: EEE: YRJ
File 93–1–1320

WASHINGTON, D. C., *Oct. 6, 1947.*

FRANK J. HENNESSY, ESQ.,
United States Attorney,
San Francisco, Calif.

Attention Mr. McMillan. Reurtel October 3, Tule Lake Cases 25294 and 5. Change in stipulation removes possible ambiguities, broadens courts discretion to include all issues and avoids agreement now that possible new proofs be made by affidavit. If Collins won't sign suggest you stipulate unconditional submission on merits or not at all.

FORD,
Assistant Attorney General.

EXHIBIT B

WAYNE M. COLLINS,
ATTORNEY AT LAW,
San Francisco 4, Calif., June 8, 1948.

In re: *Abo* v. *Clark,* No. 25294–G; *Furuya* v. *Clark,* No. 25295–G; USDC, San Francisco.

Honorable TOM C. CLARK,
Attorney General of the U. S.,
Department of Justice, Washington, D. C.

DEAR MR. ATTORNEY GENERAL: It is likely that your office has directed your attention to the fact that on April 29, 1948, U. S. District Judge Louis E. Goodman handed down his written Opinion in the Nisei renunciation cases ordering the plaintiffs' renunciations of U. S. nationality set aside and their citizenship restored.

That Opinion excludes from recovery of nationality those among the first 60 renunciants who were re-

moved to Japan and there committed specific acts of expatriation under 8 U. S. C. A., sec. 801. It reserves to you the right, for 90 days, to designate any of the plaintiffs against whom you may wish to present additional evidence through the medium of special hearings. The burden of proof in any such designated cases, however, is laid upon the Government to demonstrate the renunciations of any such designated persons were not affected by the duress in which they were held but were wholly voluntary upon their part. I believe you will agree that it is an impossible burden for the Government to sustain and that the judgment could not be reversed either on questions of fact or of law.

It has been reported that a total of 5,371 Nisei renounced their citizenship as a result of the duress in which they were held. In excess of 3,000 of them are plaintiffs in the aforesaid suits. Approximately 1,000 requests have reached me from other renunciants seeking to be included therein and it is likely that substantially all renunciants not now in the case, with few exceptions, in due course will request inclusion. Each mail brings in like requests. A great number of these requests are from young men and women who, heretofore, for diverse reasons, were fearful of joining suits which they had been informed were brought against the Government and which, therefore, might place them in danger. The fear was real to them. Only time will allay the fears of a number of them when the nightmare of their long imprisonment has faded away.

The consolidated class suits in equity were brought, as recited in the pleadings, for the benefit of the named plaintiffs, those who thereafter might be joined therein by name and also for the benefit of all similarly situated renunciants. It would seem, therefore,

that it would be for the best interest of the courts and of counsel, as well as for the parties, that all Nisei renunciants not already protected by suit be included in the mass action by consent. In this manner all the affected persons would receive the minimum legal benefit that is their due. I believe you will agree that they are entitled to that measure of protection, especially in view of the fact the government was responsible for their plight.

In consequence, to save the time and expense of the parties and the time and work that otherwise would fall upon your Department and upon the courts I suggest that a list of the names of the renunciants not yet protected by suit be supplied for inclusion in the mass actions. I am willing to bear the expense of preparation of such a list. To supply such a list of names would not violate any rule of law or regulation of your Department. The name of a renunciant is not a matter of a private or confidential nature any more than is the name of a person who becomes a citizen by a naturalization judgment. On the contrary, such names are matters of public record and interest.

If you will authorize your office to supply me with such a list at my expense those persons will be joined in the pending suit to receive the initial minimum legal protection of their fundamental rights. Thereafter I shall refrain from having an interlocutory degree entered in the consolidated cases until your office has had ample opportunity to review the files of all the plaintiffs and to designate any among them against whom it might decide to present additional evidence. Thereafter, any of those so designated for special hearing would have the opportunity to be represented by such attorneys as they might select to represent them at their special hearings.

moved to Japan and there committed specific acts of expatriation under 8 U. S. C. A., sec. 801. It reserves to you the right, for 90 days, to designate any of the plaintiffs against whom you may wish to present additional evidence through the medium of special hearings. The burden of proof in any such designated cases, however, is laid upon the Government to demonstrate the renunciations of any such designated persons were not affected by the duress in which they were held but were wholly voluntary upon their part. I believe you will agree that it is an impossible burden for the Government to sustain and that the judgment could not be reversed either on questions of fact or of law.

It has been reported that a total of 5,371 Nisei renounced their citizenship as a result of the duress in which they were held. In excess of 3,000 of them are plaintiffs in the aforesaid suits. Approximately 1,000 requests have reached me from other renunciants seeking to be included therein and it is likely that substantially all renunciants not now in the case, with few exceptions, in due course will request inclusion. Each mail brings in like requests. A great number of these requests are from young men and women who, heretofore, for diverse reasons, were fearful of joining suits which they had been informed were brought against the Government and which, therefore, might place them in danger. The fear was real to them. Only time will allay the fears of a number of them when the nightmare of their long imprisonment has faded away.

The consolidated class suits in equity were brought, as recited in the pleadings, for the benefit of the named plaintiffs, those who thereafter might be joined therein by name and also for the benefit of all similarly situated renunciants. It would seem, therefore,

that it would be for the best interest of the courts and of counsel, as well as for the parties, that all Nisei renunciants not already protected by suit be included in the mass action by consent. In this manner all the affected persons would receive the minimum legal benefit that is their due. I believe you will agree that they are entitled to that measure of protection, especially in view of the fact the government was responsible for their plight.

In consequence, to save the time and expense of the parties and the time and work that otherwise would fall upon your Department and upon the courts I suggest that a list of the names of the renunciants not yet protected by suit be supplied for inclusion in the mass actions. I am willing to bear the expense of preparation of such a list. To supply such a list of names would not violate any rule of law or regulation of your Department. The name of a renunciant is not a matter of a private or confidential nature any more than is the name of a person who becomes a citizen by a naturalization judgment. On the contrary, such names are matters of public record and interest.

If you will authorize your office to supply me with such a list at my expense those persons will be joined in the pending suit to receive the initial minimum legal protection of their fundamental rights. Thereafter I shall refrain from having an interlocutory degree entered in the consolidated cases until your office has had ample opportunity to review the files of all the plaintiffs and to designate any among them against whom it might decide to present additional evidence. Thereafter, any of those so designated for special hearing would have the opportunity to be represented by such attorneys as they might select to represent them at their special hearings.

If the foregoing proposal does not meet with your approval or consent and you decide to oppose the inclusion of additional parties plaintiff in the pending consolidated cases I solicit your consent to their inclusion in a new mass class action to be brought in the same court upon identical grounds for the protection of those who have asked my aid and for those who yet may do so. In such an event I request your consent and a stipulation that the record in such a case may be identical, except for names, with the record in Action No. 25294, now pending, or that said record be incorporated in the new case by reference or through the medium of copies. Submission of the cause for decision by the court can be deferred for a reasonable period of time, to be mutually agreed upon, for the purpose of enabling your office to designate such of the plaintiffs therein against whom you might wish to present additional evidence and designate for special individual hearings in like manner as has occurred in Action No. 25294, now pending.

I would be grateful were you to favor me with a prompt reply to these proposals.

Very truly yours,

/s/ W. M. Collins.

Copy to: H. Graham Morrison, Esq., Peyton Ford, Esq., Enoch Ellison, Esq.

JUNE 23, 1948.

Re: Abo v. Clark, No. 25294–G; Furuya v. Clark, No. 25295–G, District Court of the United States for the Northern District of California, Southern Division.

WAYNE M. COLLINS, ESQUIRE,
Attorney at Law,
San Francisco 4, California.

DEAR MR. COLLINS: Your letter of June 8, 1948, relative to the above-entitled cases, addressed to the Attorney General of the United States, has been referred to me for reply.

You first request the Department of Justice to supply you with a list of the names of persons of Japanese ancestry who renounced their American citizenship and who, as of June 8, 1948, had not instituted a suit in order to recover their citizenship. You suggest that if such a list of names were forwarded to you such persons could be included in the above-entitled cases and thereby become subject to the terms of the interlocutory decree entered by Judge Goodman on April 29, 1948.

It is the view of this Department that the names of prospective litigants should not be furnished to private counsel. This policy has been consistently followed and I am authorized to say, we see no sufficient justification for departing from it in this instance. Moreover, the Department would be unable to consent to the addition of plaintiffs to the existing cases in any event, for the reason that such addition would greatly complicate and delay the investigations now in progress as a consequence of the interlocutory decision; would make future proceedings in the cases much more complex and burdensome; and would

correspondingly delay the final disposition of this matter.

By your letter of June 8, 1948, you suggested, that in the event the Department is unable to agree to the addition of parties plaintiff to the instant cases, they should be included in a new joint action to be brought and submitted to the Court upon identical grounds and the record made in the instant cases, and be disposed of in a similar manner. The bringing of a new joint action is, of course, a matter for your judgment. However, it is the view of this office that the decision of Judge Goodman makes it necessary to ascertain the particular circumstances surrounding the act of renunciation of each *individual* plaintiff in order to determine whether the act of renunciation was voluntary or involuntary. If this is correct, it appears that there is no common question of fact affecting the several rights of persons who seek cancellation of their renunciation of citizenship and it is doubtful therefore, whether or not a joint action properly lies in this instance.

Moreover, it is the present view of this Department that, until there has been a final determination of the cases presently pending in the District Court, it is not in a position to agree to enter into any stipulation with respect to venue, cause of action or record evidence in any new case that you may decide to file. It is probable that, if you file such a new action, a stipulation could be entered holding it in status quo until the cases presently pending are finally disposed of. It would appear that such a course of action would adequately protect the interests of the parties to the new action and would not in any way prejudice the pending cases. Presumably the final decision in the pending cases would dictate the

course of action to be followed in disposing of any case hereafter filed.

I trust that this reply adequately answers your inquiries of June 8, and clearly conveys to you the position of this Department concerning the disposition of the renunciation cases.

Sincerely yours,

H. G. Morison,
Assistant Attorney General.
(For the Attorney General).

cc: Frank J. Hennessy, Esq., United States Attorney, San Francisco 1, California.

Exhibit C

yrj
January 19, 1949.

Re: Mary Kaname Furuya, et al., v. Tom Clark, etc., et al.; Tadayasu Abo, et al., etc. v. Tom C. Clark, etc., et al.

Paul J. Grumbly, Esquire
c/o Frank J. Hennessy, Esq.
United States Attorney, San Francisco, California

Dear Mr. Grumbly: Enclosed are the preliminary designations of plaintiffs in the above cases as to whom it is desired to introduce additional evidence. After you departed it was found that it was impossible to complete the preliminary designations in the time available and accordingly a separate classification has been added in each case tentatively designating plaintiffs because the investigations of the evidence available as to them have not yet been sufficiently completed. It is hoped that it will not be necessary to file these preliminary designations and that the Court will give ample time for the completion of the survey

and submission of the amendatory pleadings mentioned in the enclosed papers.

Enclosed also is a mimeograph compilation of the various opinions in the case of *Ismael Acosta-Hernandez,* most of which have been printed in the Appellees' brief in the *Inouye* case. You will note that the Appellees have omitted the opinion and ruling of the Commissioner, which was reinstated by the decision of the Attorney General and upon which he presumably placed reliance. In the event that it is determined that a reply brief on behalf of Appellant should not be filed, or if that determination has not been made at the time of argument, it is believed that the compilation should be submitted to the Court for its information and with the explanation that the Commissioner's opinion is essential to an understanding of the decision reached by the Attorney General.

Prior to the argument in the *Inouye* case, we will prepare and send you our suggestions with reference to the arguments which have been advanced in the brief for the Appellee. You will, of course, make use of such suggestions as seem appropriate at the time of argument.

We wish you the best of luck in your argument in the *Inouye* case and in your negotiations with reference to the above cases.

Sincerely,

H. G. Morison,
Assistant Attorney General.

P.S. Enclosed also is a letter from Miss Dembitz listing changes that she wishes to have made in the Appellees' brief in the *Inouye* case.

Enclosure No. 469345.

Exhibit D

The Secretary of the Interior,

Washington 25, D. C., November 30, 1945.

My Dear Attorney General: We have learned that four suits have been filed against the Government in the District Court for the Northern District of California on behalf of approximately 1,000 persons of Japanese ancestry in the Tule Lake Segregation Center who have renounced their American citizenship under the Act of July 1, 1944 (8 U. S. C. A. 801 (i)). Two of these suits, Nos. 25296R and 25297G, are petitions for a writ of habeas corpus. The other two, Nos. 25294S and 25295R, are equity suits for a declaratory judgment to determine nationality and an injunction to restrain further detention and deportation. We have not yet received copies of the complaints, but I understand that in the two equity suits the Secretary of the Interior, the Director of the War Relocation Authority, the Assistant Director of the War Relocation Authority in San Francisco, and the Tule Lake Project Director are named as defendants. According to our information, the cases have been consolidated for hearing on December 10.

The detention of the petitioners in these suits has been ordered and is being enforced by the Department of Justice and the administration of the renunciation law and the determination of deportation policy are the responsibility of the Department of Justice. It is therefore suggested that the United States Attorney be instructed to move to dismiss the suits with respect to all officials of the Department of the Interior who may be named as defendants.

Sincerely yours,

(Signed) Harold L. Ickes,
Secretary of the Interior.

The Honorable, the Attorney General.

Exhibit E

Department of Justice,
United States Attorney,
Northern District of California,
San Francisco (1), February 4, 1947.

Air Mail

Re: Tule Lake Japanese equity suits and habeas corpus proceedings, Nos. 25294–5–6–7; Your File 93–1–1292.

The Attorney General,
War and Claims Division,
Department of Justice, Washington, D. C.

(Attention: Messrs. John F. Sonnett, Assistant Attorney General, and Thomas M. Cooley II, Special Assistant Attorney General and Director of Alien Enemy Litigation Section.)

Sir: Since Wayne R. Collins, attorney for the plaintiffs and petitioners, filed a copy of "The Spoilage" just recently, it would probably be needless for us to file the copy which came with your letter of February 21, 1947. If so, may we hold it here for a week or so before returning it to you? Mr. McMillan thinks he should read it, although, obviously, a stupendous task.

Respectfully,

Frank J. Hennessy,
United States Attorney,
By (S) W. E. Licking,
W. E. Licking,
Assistant United States Attorney.

U. S. GOVERNMENT PRINTING OFFICE: 1950